UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TASHA B., Plaintiff, v. COMMISSIONER OF SOCIAL SECURITY, Defendant.	Case No. 3:19-cv-05109 ORDER AFFIRMING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of Defendant's denial of her application for supplemental security income benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court affirms Defendant's decision to deny benefits.

I. ISSUES FOR REVEW

1. Did the ALJ properly evaluate the opinion evidence?
2. Did the ALJ err in evaluating Plaintiff's symptom testimony?
3. Did the ALJ err in evaluating lay witness testimony?

II. BACKGROUND

On June 6, 2012, Plaintiff filed an application for supplemental security income benefits, alleging that she became disabled the same day. AR 26, 166-71. Plaintiff's application was denied upon initial administrative review and on reconsideration. AR 26,

99-102, 106-09. A hearing was held before Administrative Law Judge ("ALJ") Robert Kingsley on May 20, 2014. AR 44-71, 741-68. On August 26, 2014, ALJ Kingsley issued a written decision finding that Plaintiff was not disabled. AR 23-38, 549-64. The Social Security Appeals Council denied Plaintiff's request for review on February 17, 2016. AR 1-7, 570-76.

On May 23, 2016, Plaintiff filed a new application for supplemental security income benefits. AR 727-32. Plaintiff's application was denied upon initial administrative review and on reconsideration. AR 630-38, 642-52.

On April 22, 2016, Plaintiff filed a complaint in this Court seeking judicial review of ALJ Kingsley's written decision. AR 602. On December 12, 2016, this Court remanded the case to evaluate the unconsidered August 2013 opinion of examining psychologist Dan Neims, Psy.D., and to re-evaluate lay witness testimony from Plaintiff's mother. AR 605-15. On February 21, 2017, the Appeals Council vacated the ALJ's August 26, 2014 decision and issued an order remanding the case for further administrative proceedings consistent with the Court's order. AR 616-18. The Appeals Council found that Plaintiff's subsequent SSI claim was duplicative, and ordered the ALJ to consolidate the two claims. AR 618.

On June 14, 2018, ALJ David Johnson held a new hearing. AR 521-48. On October 15, 2018, ALJ Johnson issued a written decision finding that Plaintiff was not disabled. AR 486-511. ALJ Johnson found that Plaintiff had Major depressive disorder, attention-deficit hyperactivity disorder, anxiety disorder, personality disorder, and sleep disorder as severe impairments. AR 491. The ALJ found that plaintiff "had a disability

conviction and exaggerated her symptoms", and also had "secondary gain motivation". AR 505, 507-08.

On February 21, 2019, Plaintiff filed a complaint in this Court seeking judicial review of the ALJ's written decision. Dkt. 5. Plaintiff asks this Court to reverse the ALJ's decision and to remand this case for an award of benefits. Dkt. 13, p. 19.

III. STANDARD OF REVIEW

The Court will uphold an ALJ's decision unless: (1) the decision is based on legal error, or (2) the decision is not supported by substantial evidence. *Revels v. Berryhill,* 874 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Biestek v. Berryhill,* 139 S. Ct. 1148, 1154 (2019) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). This requires "more than a mere scintilla," of evidence. *Id.*

The Court must consider the administrative record as a whole. *Garrison v. Colvin,* 759 F.3d 995, 1009 (9th Cir. 2014). It must weigh both the evidence that supports, and evidence that does not support, the ALJ's conclusion. *Id.* The Court considers in its review only the reasons the ALJ identified and may not affirm for a different reason. *Garrison,* 579 F.3d at 1010. Furthermore, "[l]ong-standing principles of administrative law require us to review the ALJ's decision based on the reasoning and actual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking." *Bray v. Comm'r of SSA*, 554 F.3d 1219, 1225-26 (9th Cir. 2009) (citations omitted).

If the ALJ's decision is based on a rational interpretation of conflicting evidence, the Court will uphold the ALJ's finding. *Carmickle v. Comm'r of Soc. Sec. Admin.,* 533

F.3d 1155, 1165 (9th Cir. 2008). It is unnecessary for the ALJ to "discuss *all* evidence presented". *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation omitted) (emphasis in original). The ALJ must only explain why "significant probative evidence has been rejected." *Id.*

IV. DISCUSSION

Based on the limitations stemming from Plaintiff's severe impairments, the ALJ assessed Plaintiff as being able to perform a full range of work at all exertional levels with several work-related mental limitations. AR 493. Relying on vocational expert ("VE") testimony, the ALJ found that Plaintiff could perform other medium and light unskilled jobs at step five of the sequential evaluation; therefore the ALJ determined at step five that Plaintiff was not disabled. AR 510-11, 542-43.

A. Whether the ALJ erred in evaluating the medical opinion evidence

Plaintiff alleges that the ALJ erred in evaluating medical opinion evidence from examining psychologists Dan Neims, Psy.D., Alysa A. Ruddell, Ph.D., David Widlan, Ph.D., Enid Griffin, Psy.D., Brett Valette, Ph.D. and non-examining state agency consultants Michael Brown, Ph.D., Alex Fisher, Ph.D., Christmas Covell, Ph.D., and Beth Fitterer, Ph.D. Dkt. 13, pp. 3-7, 11-13.

In assessing an acceptable medical source – such as a medical doctor – the ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or examining physician's opinion is contradicted, the opinion can be rejected "for specific and legitimate reasons that are

supported by substantial evidence in the record." Lester, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

1. Dr. Neims

Dr. Neims examined Plaintiff four times for the Washington State Department of Social and Health Services ("DSHS").

Dr. Neims first examined Plaintiff on September 7, 2011. AR 987-1003. Dr. Neims' evaluation consisted of a clinical interview, a mental status examination, a review of the available records, and psychological testing. Based on this evaluation, Dr. Neims opined that Plaintiff would have a range of mild work-related mental limitations along with moderate limitations in communicating and performing effectively in a work setting with public contact. AR 989.

Dr. Neims examined Plaintiff again on August 22, 2012. AR 293-305, 341-53. Dr. Neims' evaluation again consisted of a clinical interview, a mental status examination, a review of the available records, and psychological testing. Based on this evaluation, Dr. Neims opined that Plaintiff would have a range of moderate work-related mental limitations along with marked limitations in communicating and performing effectively in a work setting. AR 297, 345.

Dr. Neims examined Plaintiff a third time on August 22, 2013. AR 354-70. Dr. Neims' evaluation again consisted of a clinical interview, a mental status examination, a review of the available records, and psychological testing. Based on this evaluation, Dr. Neims assessed work-related mental limitations identical to those contained in his 2012 opinion. AR 356.

And, Dr. Neims examined Plaintiff on October 29, 2014. AR 1004-20. Dr. Neims' evaluation consisted of a clinical interview, a mental status examination, a review of the available records, and psychological testing. Based on this evaluation, Dr. Neims opined that Plaintiff would have a range of moderate work-related mental limitations. AR 1006.

The ALJ assigned "some weight" to Dr. Neims' opinion that Plaintiff would have a range of mild and moderate mental limitations. AR 508. However, the ALJ gave "little weight" to Dr. Neims' 2012 and 2013 opinions that Plaintiff would have marked limitations in the ability to communicate and perform effectively in the workplace, reasoning that: (1) Dr. Neims noted that Plaintiff demonstrated a pattern of "negative impression management and mounting disability conviction"; (2) while Dr. Neims had some longitudinal perspective from his prior examinations, he did not have the benefit of reviewing other examinations and treatment notes; and (3) Dr. Neims observed inconsistencies during the evaluations, including his August 2013 observation that Plaintiff initially presented with a bright affect and no anxiety. AR 508.

With respect to the ALJ's first reason, a finding that a claimant exaggerated his or her symptoms can serve as a specific and legitimate reason for discounting limitations assessed by a physician, but only when the physician's opinion contains an affirmative finding of malingering and the record otherwise supports a conclusion that a claimant is prone to symptom exaggeration. *See Cha Yang v. Comm'r of Soc. Sec*., 488 F. App'x 203, 205 (9th Cir. 2012) (finding that the record did not contain clear evidence of malingering when the physician merely noted in his record to "R/O [rule out] malingering

[,]", failed to follow up on his suspicions and none of the claimant's other treating or examining doctors suggested that the claimant might be malingering).

In his 2012 opinion, Dr. Neims observed that Plaintiff demonstrated prominent anxiety and avoidance behavior which appeared "predominately characterologically driven." AR 296. Dr. Neims stated that Plaintiff exhibited patterns of avoidance behavior, and that there were "marked" and "quite significant" inconsistencies between Plaintiff's self-reported symptoms and the symptoms she reported during Dr. Neims' 2011 evaluation; specifically, Plaintiff's report that she was now suffering from post-traumatic stress and hallucinations. AR 296, 298-99. Dr. Neims opined that Plaintiff exhibited patterns of "negative impression management" and "mounting disability conviction." AR 298.

In his 2013 opinion, Dr. Neims again noted that Plaintiff exhibited patterns of avoidance and depersonalization that appeared "characterologically based." AR 355. Dr. Neims again noted that Plaintiff endorsed traumatic stress symptoms indicating she was diagnosed with this condition in counseling intake, but that Plaintiff adamantly denied suffering from these symptoms at previous meetings. AR 355. Dr. Neims again observed that Plaintiff exhibited patterns of negative impression management and mounting disability conviction. AR 357.

In his 2014 opinion, Dr. Neims observed that Plaintiff continued to exhibit mounting disability conviction against the backdrop of moderate mental health symptoms. AR 1007.

Here, the ALJ reasonably inferred that Dr. Neims statements that Plaintiff exhibited patterns of "negative impression management" constituted an affirmative

finding of malingering, and did not err in discounting the marked limitations contained in Dr. Neims' opinions on this basis. *See Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir.1982) (An ALJ is entitled to draw inferences logically flowing from the evidence).

Dr. Neims' statements are consistent with the 2017 opinion of examining psychologist Dr. Valette, who stated that Plaintiff was vague and evasive when explaining why she could not work, and that when a patient demonstrates anger, irritability, and excessive vagueness when being asked simple questions, this is typically due to symptom exaggeration. AR 985-96; *Cha Yang v. Comm'r of Soc. Sec.*, 488 F. App'x 203, 205 (9th Cir. 2012). Dr. Neims' statements are also consistent with the observations of examining psychologist Dr. Griffin, who stated that there was some question over Plaintiff's level of motivation, and her examination results "should be viewed with caution." AR 310.

Although the ALJ provided other specific, legitimate reasons to discount Dr. Neims' opinions, the Court need not assess whether these reasons were proper, as any error would be harmless. *See Presley-Carrillo v. Berryhill*, 692 Fed. Appx. 941, 944-45 (9th Cir. 2017) (citing *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)) (although an ALJ erred on one reason he gave to discount a medical opinion, "this error was harmless because the ALJ gave a reason supported by the record" to discount the opinion).

2. Dr. Ruddell

Dr. Ruddell examined Plaintiff on June 13, 2016 for DSHS. AR 1021-25. Dr. Ruddell's evaluation consisted of a clinical interview, a mental status examination, and a patient self-evaluation. Based on this evaluation, Dr. Ruddell opined that Plaintiff would

have a range of moderate and marked work-related mental limitations, along with severe limitations in learning new tasks. AR 1023.

The ALJ assigned "little weight" to Dr. Ruddell's opinion, reasoning that: (1) Plaintiff's presentation during Dr. Ruddell's evaluation was inconsistent with contemporaneous mental status examinations; and (2) the limitations contained in Dr. Ruddell's assessment were inconsistent with Plaintiff's self-reported activities of daily living. AR 508.

With respect to the ALJ's first reason, inconsistencies with the medical evidence may serve as specific, legitimate reasons for discounting limitations assessed by a physician. *See* 20 C.F.R. § 416.927(c)(4) ("Generally, the more consistent a medical opinion is with the record as a whole, the more weight [the Social Security Administration] will give to that medical opinion."); *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (An ALJ may give less weight to medical opinions that conflict with treatment notes).

During Dr. Ruddell's examination, Plaintiff exhibited signs of paranoia, as well as impaired memory, abstract thinking, insight, and judgment. AR 1024.

The ALJ found that Plaintiff's presentation was inconsistent with mental status examinations performed around the same time, which revealed normal mood, affect, insight and judgment, and no mood swings, paranoia or anxiousness. AR 508, 917, 920, 924.

These inconsistencies, by themselves, may only reflect the waxing and waning of symptoms common in mental health impairments. *See Garrison v. Colvin*, 759 F.3d 995, 1017-18 (2014) (with respect to mental health impairments, cycles of improvement

and debilitating symptoms "are a common occurrence, and in such circumstances it is error for an ALJ to pick out a few isolated instances of improvement over a period of months or years and to treat them as a basis for concluding a claimant is capable of working.").

Yet the context of the entire record supports the ALJ's conclusion that these inconsistencies are part of a broader pattern of inconsistent statements and symptom magnification; the evidence throughout the longitudinal record and the opinions of Dr. Neims, Dr. Brett, and Dr. Griffin are substantial evidence supporting the ALJ's decision on this point. *See supra* Section A.I; *see infra* Section B. As such, the inconsistencies cited by the ALJ are a specific and legitimate reason for discounting the limitations assessed by Dr. Ruddell.

3. Dr. Widlan

Dr. Widlan examined Plaintiff on January 23, 2009. AR 251-55. The ALJ assigned "little weight" to Dr. Widlan's opinion, reasoning that it was rendered several years prior to Plaintiff's alleged disability onset date. AR 509.

A finding that a medical opinion is too distant in time from the period at issue to be useful in making a disability determination can serve as a specific and legitimate reason for discounting that opinion. *Johnson v. Astrue,* 303 F. App'x 543, 545 (9th Cir. 2008) (finding that an ALJ properly rejected medical opinions that were remote in time, and instead relying more heavily on more recent opinions in denying Social Security disability benefits); *see also Flores v. Colvin*, 546 Fed. Appx. 638 (finding that the ALJ properly rejected part of a medical opinion because it was ten years old and instead relying upon two more recent opinions).

Here, the earliest Plaintiff could be found disabled is the date she applied for SSI, either June 6, 2012 or May 23, 2016, depending of which of the two consolidated applications is used. AR 166-71, 727-32; 20 C.F.R. §§ 416.335, 416.501. Dr. Widlan's opinion was issued either 3 or 7 years before Plaintiff could conceivably have been found disabled by the Social Security Administration, and significantly predates the period at issue. As such, the ALJ has provided a specific and legitimate reason for discounting Dr. Widlan's opinion.

4. Dr. Griffin

Dr. Griffin examined Plaintiff on August 27, 2012. AR 307-10. Dr. Griffin's evaluation consisted of a clinical interview and a mental status examination. Based on this evaluation, Dr. Griffin opined that Plaintiff had no memory issues that would prevent her from performing simple tasks, and that once Plaintiff began psychiatric treatment, she would be able to engage in job training and/or part-time work, and that within 12 months Plaintiff would be able to resume full time work. AR 310.

The ALJ assigned "significant weight" to Dr. Griffin's opinion, reasoning that Dr. Griffin was familiar with Social Security regulations, was able to examine Plaintiff in person, and that Dr. Griffin's opinion that Plaintiff could perform simple tasks was consistent with the medical record and Plaintiff's self-reported activities of daily living. AR 506.

Plaintiff contends that Dr. Griffin's opinion is consistent with the opinions of Dr. Neims and Dr. Ruddell. Dkt. 13, pp. 11-12. Even if the Court assumes, for purposes of argument, that Plaintiff is correct on this point, Dr. Griffin's opinion that her examination results "should be viewed with caution" due to Plaintiff's lack of motivation is also

consistent with the reservations that Dr. Neims and Dr. Brett expressed about Plaintiff's performance during examinations. AR 298, 310, 357, 985-96, 1007. The ALJ's determination is supported by substantial evidence.

5. Dr. Valette

Plaintiff contends that Dr. Valette's opinion is consistent with the opinions of Dr. Neims and Dr. Ruddell. Dkt. 13, pp. 11-12.

Dr. Vallete examined Plaintiff on April 9, 2017. AR 981-86. Dr. Vallete's examination consisted of a records review, a clinical interview, and a mental status examination. Based on this evaluation, Dr. Vallete opined that Plaintiff could understand, remember, and carry out simple one and two step instructions, as well as an extensive variety of complex instructions. AR 986. Dr. Valette further opined that Plaintiff would be able to interact appropriately with supervisors, co-workers, and the public, and would be able to maintain sufficient concentration to perform simple and complex tasks. *Id.*

The ALJ assigned "significant weight" to Dr. Valette's opinion, reasoning that it was consistent with Plaintiff's self-reported daily activities, and also assigned significant weight to Dr. Valette's conclusion that Plaintiff's vague and evasive behavior was typical of individuals engaging in symptom exaggeration. AR 507.

First, Dr. Valette, unlike Dr. Neims and Dr. Ruddell, assessed Plaintiff as having no work-related functional limitations. AR 986, compare with AR 297, 345, 1006, 1023. Second, Dr. Valette's conclusion that Plaintiff was likely engaging in symptom exaggeration is consistent with the opinions of Dr. Ruddell and Dr. Griffin. The ALJ's assessment is supported by substantial evidence.

6. Dr. Covell and Dr. Fitterer

Non-examining state agency psychologists Dr. Covell and Dr. Fitterer offered opinions concerning Plaintiff's work-related functional limitations in late 2016. AR 583-85, 595-97. Dr. Covell opined that based on her review of the record, Plaintiff had the ability to understand and recall very short and simple instructions. AR 583. Dr. Covell further opined that Plaintiff had the ability to perform simple, routine tasks and some detailed/complex tasks, might have some lapses in concentration, persistence, and pace, but could persist at simple, routine tasks for a workday/week. AR 584. Dr. Covell further opined that Plaintiff should have limited, superficial contact with the general public and co-workers. AR 584-85. Dr. Fitterer assessed Plaintiff as having identical limitations. AR 595-97.

The ALJ did not evaluate the opinions of Dr. Covell and Dr. Fitterer. The Ninth Circuit has held that failing to discuss a medical opinion generally does not constitute harmless error. *Hill v. Astrue*, 698 F.3d 1153, 1160 (9th Cir. 2012) ("the ALJ's disregard for Dr. Johnson's medical opinion was not harmless error and Dr. Johnson's opinion should have been considered") (citing 20 C.F.R. § 404.1527(c) (noting that this regulation requires the evaluation of "every medical opinion" received)).

However, reasons given by an ALJ for rejecting an opinion of an earlier physician may apply with equal force to an opinion issued later by a different physician. *See Hoyt v. Colvin*, 607 F. App'x 692, 693 (9th Cir. 2015) (holding that new evidence did not require remand because the reasons the ALJ gave for rejecting the opinions of claimant's treating doctor applied with equal force to another doctor's newly submitted opinions), citing *Molina v. Astrue*, 674 F.3d 1104, 1122 (explaining that, even when the

ALJ fails to comment upon certain testimony, such failure is harmless when the ALJ's reasons for rejecting other testimony "apply with equal force" to the ignored testimony).

In this case, the ALJ assigned "significant weight" to the 2012 opinions of non-examining state agency psychologists Dr. Brown and Dr. Alex Fisher, who assessed Plaintiff as being able to understand simple instructions, perform simple, routine tasks, and needing to have limited contact with the public. AR 78-79, 93-94, 506.

The ALJ reasoned that Dr. Brown and Dr. Fisher were familiar with Social Security regulations, and had the opportunity to examine the medical record in forming their opinions. AR 506. However, the ALJ reasoned that Dr. Brown and Dr. Fisher did not have an opportunity to review additional evidence which supported additional restrictions to work that does not require interaction with the general public and that does not require more than occasional adaptation to changes in the work setting or work processes. *Id.*

First, the limitations assessed by Dr. Brown and Dr. Fisher in 2012 are similar to the limitations assessed by Dr. Dr. Covell and Dr. Fitterer in 2016.

Second, it is unclear how the ALJ's decision would be different even if the limitations contained in the opinions of Dr. Covell and Dr. Fitterer were credited as true. Here, when assessing the RFC, the ALJ found that Plaintiff could perform simple, routine tasks that did not require interaction with the general public and that did not require more than occasional adaptation to changes in the work setting or work processes; these limitations are broadly consistent with those assessed by Dr. Covell and Dr. Fitterer, and with respect to the limitations concerning adaptation, are more restrictive then the opinions of the state agency consultants. AR 493.

Accordingly, while the ALJ erred in not evaluating the opinions of Dr. Covell and Dr. Fitterer, another remand would be unlikely to clarify the record further. *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (noting that harmless error principles apply in the Social Security context).

B. Whether the ALJ erred in evaluating Plaintiff's testimony

Plaintiff contends that the ALJ did not provide clear and convincing reasons for discounting her symptom testimony. Dkt. 13, pp. 13-17.

In weighing a Plaintiff's testimony, an ALJ must use a two-step process. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine whether there is objective medical evidence of an underlying impairment that could reasonably be expected to produce some degree of the alleged symptoms. *Ghanim v. Colvin,* 763 F.3d 1154, 1163 (9th Cir. 2014). If the first step is satisfied, and provided there is no evidence of malingering, the second step allows the ALJ to reject the claimant's testimony of the severity of symptoms if the ALJ can provide specific findings and clear and convincing reasons for rejecting the claimant's testimony. *Id. See Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9th Cir. 1999).

In discounting Plaintiff's symptom testimony, the ALJ reasoned that: (1) the record contains evidence of symptom exaggeration and disability conviction that undermines her credibility; (2) Plaintiff's allegations were inconsistent with the medical record; (3) Plaintiff's allegations were inconsistent with her self-reported activities of daily living; (4) many of Plaintiff's mental health symptoms occurred in the context of situational stressors; and (5) Plaintiff's mood improved with counseling and medication. AR 504-06.

With respect to the ALJ's first reason, affirmative evidence of symptom magnification, or malingering, relieves an ALJ from the burden of providing specific, clear, and convincing reasons for discounting a claimant's testimony. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir.2006); *Morgan v. Comm'r of Soc. Sec. Admin*., 169 F.3d 595, 599 (9th Cir.1999). "The essential feature of malingering is the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as . . . obtaining financial compensation . . . or obtaining drugs." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 726 (5th ed. 2013) ("DSM V").

Here, the ALJ found that Plaintiff had a disability conviction and exaggerated her symptoms, which was supported by opinions of Dr. Neims, Dr. Griffin, and Dr. Valette. AR 505. As discussed above, the ALJ did not err in finding that the statements in these opinions indicated that Plaintiff exaggerated her symptoms. *See supra* Section A.I.

The ALJ therefore found that Plaintiff was malingering and the "clear and convincing reasons" standard does not apply. *Baghoomian v. Astrue*, 319 Fed. App'x 563, 565 (9th Cir. 2009). To discredit a claimant's testimony when a medical impairment has been established, but the record contains affirmative evidence of malingering, the ALJ must provide "specific, cogent reasons" for discounting a claimant's testimony. *See Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007).

Here, the ALJ relied on the inconsistencies between Plaintiff's allegations and the medical record; the ALJ has provided specific and cogent reasons for discounting Plaintiff's testimony. *See* 20 C.F.R. § 416.927(c)(4); *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014).

The ALJ found that Plaintiff's performance during consultative examinations, which was itself called into question by several examining psychologists, was also inconsistent with the longitudinal record; Plaintiff routinely demonstrated intact memory, concentration, insight, and judgment and typically presented as alert and fully oriented during mental status examinations. AR 408, 414, 433, 438, 444, 450, 455, 472, 478, 504,1065, 1076, 1090, 1107, 1134, 1157, 1174.

The ALJ also found that Plaintiff's testimony that she suffered from hallucinations was inconsistent with the treatment record; Plaintiff did not report hallucinations, and Dr. Neims' stated that Plaintiff made inconsistent statements about whether she had experienced visual and auditory hallucinations. AR 296, 300, 309, 344, 473, 479, 505, 898, 955, 957, 991, 1021-25, 1225, 1228, 1231, 1234, 1237, 1240, 1242, 1245, 1248, 1251, 1254, 1257, 1259, 1261, 1263, 1269, 1273.

The ALJ also noted that Plaintiff made inconsistent statements concerning her drug use. Plaintiff testified at the hearing that she had not used drugs since age 16 or 17, but stated to Dr. Ruddell in 2016 that she had last used heroin, cocaine, and methamphetamine in 2006. AR 505, 532-33 1022.

The ALJ's finding that the record contains evidence of malingering is supported by substantial evidence, and in citing the inconsistencies between Plaintiff's allegations and the record, the ALJ has provided specific and cogent reasons for discounting her testimony.

C. Whether the ALJ erred in evaluating lay witness statements

Plaintiff contends that the ALJ erred in evaluating lay witness statements from her mother. Dkt. 13, pp. 17-18.

When evaluating opinions from non-acceptable medical sources such as a therapist or a family member, an ALJ may expressly disregard such lay testimony if the ALJ provides "reasons germane to each witness for doing so." *Turner v. Commissioner of Social Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010) (citing *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001); 20 C.F.R. § 416.902.

Here, the ALJ found the 2013 statements made by Plaintiff's mother, in which Plaintiff's mother reported that Plaintiff suffered from hallucinations and other serious mental health symptoms, reflected Plaintiff's self-reports, and were inconsistent with the record for the same reasons as Plaintiff's own statements were inconsistent with the objective evidence. AR 222-24, 509; *Valentine v. Comm'r, Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (an ALJ may reject lay witness testimony for the same reasons she rejected a claimant's subjective complaints if the lay witness statements are similar to such complaints). The statements from Plaintiff's mother are similar to Plaintiff's own allegations, and the ALJ has provided a germane reason for discounting these statements.

CONCLUSION

Based on the foregoing discussion, the Court finds the ALJ properly determined plaintiff to be not disabled. Defendant's decision to deny benefits therefore is AFFIRMED.

Dated this 30th day of June, 2020.

Theresa L. Fricke
United States Magistrate Judge